1940

File No. S.DWR 7/50

Legal Department

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Examined A BRANCH

Subject:— Dharwar Suit

Civil Suit No. 199 of 1949

Vimpax Hanamant Joshi — Pltff

vs

The State of Bombay — Deft

For a declaration that the order of the Bombay Revenue Tribunal dated 18/4/47 setting aside the order the Commr. S.D. of 23/12/43 and restoring that by the collector's order dated the 18th Dec. 1943 in respect of the suit and is illegal and ultra vires and for permanent injunction

Civil Appeal No. 200 of 1957

1.39

S DWR 7/50

File No.

S.DWR 7/50

CONTENTS.

Legal Department File No. S. ~~Barode~~ DWR. 7/50.

Sr.No.	R.I./O.No.	Subject	Pages.

Suits Dharwar.

C. S. No. 199 of 1949

Virupax Hanamant Joshi

Vs.

Province of Bombay.

For a declaration that the order of the Bombay Revenue Tribunal dated the 8th Aug. 1947 setting aside the order of the Commissioner, Southern Division, dated the 23rd Dec. 1943 and restoring that by the collector's order dated the 18th Dec. 1943 in respect of the suit land is illegal and ultra vires and for ~~perp~~ permanent injunction.

1-78

L.C.Suit No. 199/49.

Written statement.

In the Court of the Civil Judge, Senior Division,

H u b l i.

Plaintiff :- Virupax Hanamant Joshi, age 40, occ. agric,
Residence Hangal, District Dharwar.

vs.

Defendant :- The Province of Bombay.

Claim Rs

In this the written statement of the deft is as follows :-

1. The plaint allegations are not admitted by this defendant.

2. The plff's suit is time barred.

3. The suit is barred by Revenue Jurisdiction Act .

4. The cause of action has not arisen on ~~xx~~ 1-10-1948. It has been wrongly mentioned by the plff.

5. The occupation of the plff is falsely mentioned as agriculture. He is a merchant.

6. The lands were not bona fide taken by him for personal cultivation, but to make a profit out of the same by subletting them to others.

7. It is in contrevention of the terms of the Kabulayat executed by the plff on 23-2-1944; in case it Kabulayat is held to be a concluded agreement as per orders of the Commissioner, S.D.

8. He cannot question the order of the Revenue Tribunal in this Court by this suit since it had full rights to decide the question under the Land Revenue Code. The order is intra vires ~~ka~~ valid and legal and binding on the plff.

9. This is not a case of concluded agreement between the Government and the plff.

10. The order of the Commissioner S.D. was in the nature of a judicial order and hence that cannot be a contract or agreement between the Government and the plff. The Government has not given an undertaking so as to conclusde a contract.

11. The Plff has passed a Kabulayat in obedience to an order, which was set aside in appeal, and hence the Kabulayat is null and void.

12. It is false that the plff has effected repairs and improvements on the suit lands. He has neither spent Rs 500/- nor Rs 5000/- as alleged by him.

13. Since he was an yearly tenant, the repairs or improvements were not warranted by law or agreement nor was it necessary. There was no agreement or consent of the Government for the same.

14. Since the plff alleges in para 9 of the plaint that he took the suit lands on lease for 1942-43 and 1943-44, he cannot now bring this suit for declaration and injunction only, without asking for possession.

15. The plff's suit be dismissed with costs.

Hubli. 23 -12-1949.

Sub Government pleader, Hubli.

Hubli C.S. No. 199 of 1949.

This suit is filed by Mr. Virupax Hanamant Joshi of Hangal against the State of Bombay for a declaration that the order of the Bombay Revenue Tribunal dated 8-8-1947 is ultra-vires, null and void and for a consequential injunction and in the alternative for a decree of Rs. 5000/- as damages and compensation. The Collector of Dharwar who is the principle officer connected with this case has not submitted his report for defence of the suit as required by Rule 118 of the Law Officers' Rules. The papers of the case have, however, been received from the Sub-Government Pleader, Hubli and he reports that the case is fixed for exparte hearing on 11-3-1950.

2. The facts leading to this litigation have been stated in the note dated 28-8-1946 recorded by A.S. at the time of the B.R.T. appeal. It was Govt's contention that the B.R.T. had no jurisdiction to hear the appeal as the case was not a revenue case. The B.R.T., however, overruled the objection and reversed the decision of the Commr. S.D. It is against this decision of the B.R.T. that the plaintiff has filed this suit.

xslip A, BRTADWR 46.

3. It is not clear what attitude Government should adopt in this litigation. The plaintiff has challenged the jurisdiction of the B.R.T. and consistently with the stand taken before the B.R.T., Govt. must support it. It is, however, not known whether the Revenue Department would like such a stand to be taken. There is no report from the Collector and his intention is not known. In the circumstances, the papers may be referred to the R.D. and that Department may be requested to indicate the line which Government would like to adopt in this case. In the meantime, the Sub-Government Pleader may be requested to see the Civil Judge personally and to

press for a month's adjournment to enable Government to issue instructions in the matter.

24 Regd
27/2

A.S. In the appeal before the B.R.T Government filed a written statement contending that the Tribunal had no jurisdiction. But for the reasons given in paragraph 4 of its order of 8-8-1947 the Tribunal held that it had jurisdiction. I do not think that it is precluded now from relying upon that decision and supporting the Tribunal's order on the same grounds. On merits also the suit can be defended on the grounds indicated in paras 5-6 and 7 of the Tribunal's order. If R.D. agrees the defence may be sanctioned accordingly.

RM

ex p 33 in L.D file
no BRTA DWR/46
put up
pp 37-43 — do

REVENUE DEPARTMENT
LD 21575
1.3.50
BRT 222

A.L.R. Gavaracharya is not made a party to the suit & a claim of Rs 5000 in the alternative has been made. I think the suit should be defended. If RD agrees, a suitable memo of instructions & a W.S. would be issued for the defence of the suit.

R.K. 28/2

Mr. Sul 2.3

x with BRTA DWR/46 & case pp.

R.L.A. 28/2

Dir. to R.D. No. 2896 Dt 1-3-1950

5-91-5
-17

Le. Suit No. 199 of 1949.

In the Court of the Civil Judge, Senior Division,
Hubli, at Hubli.

Virupax Hanamant Joshi, age about 40,
occupation agriculture, residence Hangal,
District Dharwar.

..... Plaintiff.

Against.

The Province of Bombay.

..... Defendant.

Claim Rs.

Plaintiff begs to state and submit as follows :-

1. Description of the suit property:

R.S.Nos.	Acreage.	Assessment.
32	4-37	11-11-0
33	4-33	12-7 -0
34	8-15	13-12-0
35	6-38	14-12-0
36	8-14	18- 0-0

2. The above lands are situated at Savikeri, in Hangal Taluka. The said village is malarious and contains only 8 to 10 houses only. The aforesaid lands were forfeited to Government for nonpayment of Judi. It is clear that the lands were full of weeds and

and shrubs and were not yielding enough to pay the Judi or assessment thereon.

3. Plaintiff, whose main source of livelihood is agriculture, wanted to go in for the lands and cultivated them personally, after effecting the necessary improvements. Hence, he applied on 22-1-1942 for the grant of the said lands to him, and the Prant Officer, II Division, made an order on 21-2-1942 granting the said lands to plaintiff at Rs.10/- per acre.

4. Against the said order of the Prant Officer, an appeal was filed by one Jaayaracharya, to the Collector and the Collector reversed the order of the Prant Officer even without issuing notice of the appeal to the plaintiff. Plaintiff preferred an appeal to the Commissioner, Southern Division, against the order of the Collector, and it was allowed on 23-12-1943 and the order of the Prant Officer was restored.

5. Then the said Jayarayacharya purported to prefer an appeal to the Revenue Tribunal, though no such appeal was competent. The said appeal was filed beyond the period of limitation allowed by law, and should have been rejected initially. On the other hand, the Revenue Tribunal entertained the appeal and inspite of the objection raised by Government that it had no jurisdiction to entertain and hear the appeal, set aside the order of the Commissioner, Southern Division, on 8-8-1947.

6. The order was not communicated to plaintiff, but plaintiff filed a petition for Review of the said order after he came to know of the same, but the said petition was dismissed on 1-10-1948.

7. It is submitted that the order of the Revenue Tribunal dated 8-8-1947 is without jurisdiction and ultra vires, and a nullity. It was not a Revenue case at all, and no appeal to the Revenue Tribunal was competent. Agaimx Jayarayacharya had no locus standi to file the appeal at all, and it should have been rejected on the ground that he was not competent to maintain the appeal. Further, when the Sanad was granted to plaintiff in pursuance of the order of the Commissioner, it was a case of concluded agreement lawfully entered into, and such arrangement is not liable to be set aside and could not be set aside. The Revenue Tribunal has no jurisdiction to interfere with such concluded ~~xxxxxxxx~~ agreements.

8. Without prejudice to the above contentions, it is submitted that the order is wrong on merits also and proper procedure has not been followed. The date of hearing of this appeal was not communicated to plaintiff, and no opportunity was given to him to place his case before theRevenue Tribunal. The reasons given for reversing the order are unsound and unwarranted by the facts of the case.

9. Though the order of the Revenue Tribunal was a nullity, in order to avoid, if possible, proceedings in Court and by way of a precautionary measure an application for review was made, and it was prayed that hearing should be given to plaintiff. But no notice or opportunity was given to plaintiff to put forward his case before them, and the application for review was dismissed on 1-10-1948. Plaintiff took the lands on lease for 1942-43 and 1943-44 as he did not obtain possession of the lands as owner x

immediately after the order of the Prant Officer. He spent Rs.500/- in 1942-43, and in subsequent years, after the order of the Commissioner, when a Sanad was granted to him, he has spent about Rs. 5000/- for the improvement of the lands as he was owner then and bona fide believed that he would continue to remain in possession as owner. The Revenue Tribunal has not properly and correctly appreciated the facts of the case and the observations made by them are erroneous. They are emphatically denied.

10. Under these circumstances, it has become necessary to file the suit for a declaration that the order of the Revenue Tribunal dated 8-8-1947 is ultra vires and null and void, and for consequen--tial injunction that the said order should not be given effect to. In any event, if the Court considers that the above reliefs cannot be granted, plaintiff si claims, in the alternative, by way of compensation and damages, Rs. 5000/-.

11. The cause of action accrued on 1-10-1948 when the Revenue Tribunal rejected the petition for Review and refused to review the order of 8-8-1947.

12. The suit being for a declaration with consequential relief viz., a permanent injunction against defendant, a fixed Court fee of Rs. 6-4-0 is paid for this relief. Further Court fee is paid on Rs. 5000/-, the amount claimed by plaintiff by way of damages and compensation.

13. Notice has been duly delivered to the Collector, Dharwar, as required by law. The acknowledgement received in this behalf is produced.

12 : 4 13

14. The plaintiff prays as follows :-

i. A declaration be granted that the order of the Revenue Tribunal dated 8-8-1947 is ultra vires and null and void and not binding on plaintiff and a consequential permanent injunction be issued against defendant, the Province of Bombay, res--training them from carrying out and giving ~~and~~ ~~and~~ effect to the said order of the Revenue Tribunal.

ii. In the alternatice, Rs. 5000/- be awarded to plaintiff by way of compensation and damages and future interest thereon, be awarded.

iii. All costs of suit be awarded.

iv. All other reliefs to which plaintiff may be entitled in law, equity and justice.
be awarded

Dharwar.

I, Virupax Hanamant Joshi of Hangal, hereby declare on solemn affirmation that whatever is stated above is true to the best of my knowledge and belief.

Dharwar.

Dated:-

pleader.

15

Hubli (Dharwar) Civil Suit No.199 of 1949.

In this suit the plaintiff asks for declaration that the order passed by the Bombay Revenue Tribunal setting aside the order of the Commissioner S.D. and restoring that of the Collector which directed that the grant of the suit lands to the plaintiff should be set aside and the lands should be sold by public auction is illegal and ultra vires. The suit is defensible and the defence may be sanctioned on the lines of the accompanying brief. It is reported ~~xxx~~ by the Sub Government Pleader that the suit is fixed for hearing on 11th March 1950 and no more time will be granted. The matter may therefore be treated as immediate.

Telegram is being sent to Sub-G.P

10/3/50

A LR BK 10/3

Secy Rev. 10.3.

10.3.50.

RECEIVED IN REVENUE DEPARTMENT.
ON 10.3.50 ART
2.45

xNo 3340
d. 10-3-1950

17—ab

In the Court of the Civil Judge, Senior Division,
H u b l i.

Civil Suit No.199 of 1949.

Virupax Hanamant Joshi of Hangal. ... Plaintiff

Vs.

The State of Bombay. ... Defendant.

The following is the written statement of the defendant in this case.

1. The suit is time barred under article 14 of Schedule I to the Indian Limitation Act.

2. The defendant does not admit that the plaintiff's main source of livelihood is agriculture. It is submitted that the plaintiff is not by profession an agriculturist but a merchant.

3. The plaintiff's allegation that the order of the Bombay Revenue Tribunal dated 8th August 1947 is without jurisdiction and ultra vires is not admitted. The defendant submits that the Tribunal had jurisdiction to entertain the appeal. The plaintiff's allegation that there was concluded agreement between himself and Government which could not be set aside is not correct and is hereby denied. The allegations in paragraph 8 of the plaint are not admitted. The defendant submits that the plaintiff had the opportunity to represent his case before the Bombay Revenue Tribunal.

4. It is submitted that the defendant took the suit lands on lease in the year 1942-43 under the Asstt. Collector's order and then sub-let them at a higher rate and made profit. He is not a resident of the village in which the lands are situated. The Revenue Tribunal was, therefore, fully justified in setting aside the Commissioner's order and restoring that of the Collector. The plaintiff's allegation that he had spent some amount on the improvement of the land is not admitted.

5. The order passed by the Bombay Revenue Tribunal is lawful and intra vires and the plaintiff is not entitled to any relief either of declaration or by way of damage. The amount of damage claimed is also excessive

6. It is, therefore, submitted that the suit may be dismissed with costs.

District Government Pleader.

I, District Government Pleader, do hereby declare that what is stated in paragraphs 1 to 6 above is true according to the information received and believed to be true. This verification is made at on day of 1950.

District Government Pleader.

A *Suits :*

21 — 37

Dharwar.

For a declaration that the order of the Bombay Revenue Tribunal dated the 8th August 1947 setting aside the order of the Commissioner, Southern Division, dated the 23rd December 1943 and restoring that by the Collector's order dated the 18th December 1943 in respect of the suit land is illegal and *ultra vires* and for permanent injunction. A

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 4031.

Bombay Castle, 23rd March 1950.

Letter from the Subordinate Government Pleader, Hubli, No. 128, dated 23rd December 1949—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION) HUBLI.

Civil Suit No. 199 of 1949.

Virupax Hanamant Joshi ... .. Plaintiff;

versus

The State of Bombay .. .. Defendant. B

Memorandum to the Subordinate Government Pleader, Hubli, No. 3437, dated the 13th March 1950—Forwarding a copy of the brief with its accompaniments in advance.

MO-II Leg H 186—1

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

Original

G. R., No. 4031, L. D., dated the 23rd March 1950.

To

*The Revenue Department,
*The Collector of Dharwar,
*The Commissioner, Southern Division,
The Subordinate Government Pleader, Hubli (with two copies of the brief),
*The Secretary, Bombay Revenue Tribunal.

*With a copy of the brief.

No. of 1950.

Copy forwarded for information and guidance to

Issue
15/6

Subtd. after issue
File in S. Dharwar/50 (new)
16-6
Supdt MN 16/6

23

DHARWAR HUBLI CIVIL SUIT NO. 199 OF 1949.

Chronological Statement of Facts.

The suit is filed by Mr. Virupax Hanumant Joshi for a declaration that the order of the Bombay Revenue Tribunal dated 8th August 1947 setting aside the order of the Commissioner, Southern Division, dated 23rd December 1943 and restoring that by the Collector's order dated 1st December 1943 in respect of the suit land is illegal and *ultra vires* and for permanent injunction restraining the defendant—Government—from enforcing the said order or in the alternative for Rs. 5,000 by way of compensation and damages.

Collector's File p. 1.

Collector's File p. 19A.

2. On 22nd January 1942 the plaintiff and one S. K. Deshpande applied to the Mamlatdar, Hangal, for grant of survey Nos. 32 to 36 of the village of Savikeri on new and impartible tenure. Subsequently Mr. Deshpande withdrew his application in favour of the plaintiff.

Collector's File p. 33.

Collector's File p. 34.

3. After making necessary inquiries the Mamlatdar recommended in his report dated 9th February 1942 that the lands in question may be granted to the plaintiff on payment of occupancy price of Rs. 10 per acre. The Assistant Collector accepted the Mamlatdar's proposals and by his order No. LGL. 136 of 21st February 1942 granted the suit lands to the plaintiff on new and impartible tenure on payment of occupancy price of Rs. 10 per acre.

Collector's File p. 51.

Collector's File p. 63.

4. Meanwhile on 15th February 1942 one Jayacharya Guracharya of the village of Hangal submitted an application to the Assistant Collector stating that the above lands being adjacent to some of his own lands it would be inconvenient to him if they were sold to another and offering to take them on payment of an occupancy price of Rs. 15 per acre. The Assistant Collector having declined to grant his request, the applicant applied to the Collector on 15th April 1942 who set aside the Assistant Collector's order and directed that the lands should be sold by public auction (*vide* Collector's order No. LGLSR. 657, dated 1st September 1942).

Collector's File p. 73.

5. The plaintiff thereupon appealed to the Commissioner, Southern Divison, who under his order No. LND.AP. 934, dated 23rd December 1943 set aside the Collector's order and restored that of the Assistant Collector in view of the fact that the lands had already been leased to the plaintiff and that he had invested some amount on the improvement of the land.

Collector's File p. 79.

6. The applicant Jayacharya thereupon preferred an appeal to the Bombay Revenue Tribunal who by their order dated 28th August 1947 set aside the order made by the Commissioner and restored that of the Collector directing that the land should be sold by public auction. The plaintiff made an application for review to the Bombay Revenue Tribunal but that application was also rejected by the Tribunal by its order No. O-125, dated 1st October 1948.

7. On 17th February 1949 the plaintiff gave notice of suit under section 80 of the Civil Procedure Code and on 14th June 1949 filed the suit in the Court of the Civil Judge, Senior Division, Hubli.

Grounds of Defence.

The first contention of the plaintiff is that the order of the Bombay Revenue Tribunal which he seeks to set aside was illegal because this was not a revenue case at all and therefore, the Tribunal had no jurisdiction to entertain the appeal filed by Jayacharya. Under section 4 of the Bombay Revenue Tribunal Act of 1939 the Tribunal is invested with such jurisdiction to entertain appeal and revise decision in revenue cases as was vested in the Government immediately before the 1st day of April 1937 under any law for the time being in force. It is true that the Tribunal has consistently held that the question whether land should be granted or not is a matter of discretion and not a revenue case within its jurisdiction. But the question in this case is slightly different. The question is not whether land should be granted or not but whether, after the revenue officers had decided to grant it, the procedure followed in disposing of it was proper, and whether the land should have been sold by public auction or by private sale. The question therefore, involves the revenue of Government because the lands were granted at a fixed price of ten Rupees per acre whereas in the opinion of the Collector the same statistics in the village showed that similar land had fetched Rs. 150 per acre. There is, therefore, no doubt that the case involved the revenue of Government and therefore, the Tribunal had jurisdiction to decide the case.

2. It is further alleged by the plaintiff that Jayacharya—the appellant had no *locus standi* to file the appeal. This contention is wholly untenable. Jayacharya had applied for grant of the land and the Collector had passed the order which would have enabled him to obtain the land at the public auction. He was therefore a party interested and was competent to file the appeal under section 204 of the Bombay Land Revenue Code.

3. The next contention is that the date of hearing of the appeal was not communicated to the plaintiff and no opportunity was given to him to place his case before the Revenue Tribunal. Now under section 209 of the Land Revenue Code when an appeal is instituted, the appellate authority has the power for reasons to be recorded in writing either to annul, reverse, modify or confirm the decision appealed against or to direct the subordinate officer to make further inquiry. The same provision is to be found in Regulation XI of the Regulations made by the Tribunal under section 13 of the Bombay Revenue Tribunal Act. There is a proviso to that Regulation under which no decision or order can be annulled, reversed or modified to the prejudice of any party unless opportunity has been given to such party to represent his case before passing the final decision or order. It has been observed by the Tribunal in paragraph 2 of its order that there was no appearance either on behalf of the appellant Jayacharya or on behalf of the respondent Virupax Hanumant Joshi (plaintiff). This observation militates against the plaintiff's contention that no opportunity was given to him to place his case before the Tribunal.

4. Even on merits the Tribunal's order is correct and proper. The grounds on which the Collector reversed the order of the Assistant Collector were that the lands were adjacent to those of the appellant Jayacharya, that the officiating Kulkarni of the village Mr. Deshpande was the joint applicant with the plaintiff though he subsequently withdrew his application and had purposely suppressed the fact that the lands were adjacent to the lands of the appellant and had reported that there was no demand for the lands though the sale statistics showed that the lands in the village had fetched as much as Rs. 150 per acre. The plaintiffs to whom the lands were granted by the Assistant Collector was

a resident of Hangal and as pointed out by the Revenue Tribunal he had taken the land in 1942–43 on lease but the Record of Rights showed that he had leased them at a higher rate and had made profits. It also appears that the plaintiff is not by profession an agriculturist but a merchant; nor is he a resident of the village in which the lands are situated. The Commissioner confirmed the Assistant Collector's order on the ground that the plaintiff had spent some amount over the improvement of the land but having regard to the fact that the plaintiff had taken the lands on lease for one year and had sub-let them to others it is impossible to believe that he could have personally spent any appreciable amount on the improvement of the lands. It should, therefore, be contended that the orders passed by the Assistant Collector and the Commissioner were clearly wrong and that the Tribunal was fully justified in setting aside the Commissioner's order and directing that the lands should be disposed of by auction.

5. The plaintiff has contended that the grant of lands could not be set aside as he had also executed a Kabulayat in respect thereof. But such cancellation of the grant is within the competency of the Tribunal in exercise of the powers under section 211 of the Land Revenue Code. This principle has been well settled by the Privy Council's decision in the case of Secretary of State *v.* Anant Krishnaji Nulkar, 36 B.L.R. p. 242.

6. *Limitation.*—The order of the Bombay Revenue Tribunal which the plaintiff seeks to set aside was passed on 8th August 1947. The plaintiff has filed this suit on 14th June 1949 and therefore, even excluding the statutory period of notice of two months, the suit is time-barred under Article 14 of Schedule I to the Indian Limitation Act.

7. For the above reasons it should be contended that the suit fails and must be dismissed with costs.

42

S Dharwar 7/5
(New file)
1716.

27 — 41

Received on 14-6-49.

Registered on 14-6-49.

Decided on 28-2-51.

Duration : 1 year, 8 months and 14 days

In the Court of the Civil Judge, Senior Division,

at Hubli. Ex. 117.

Pleaders : -

Shri. Jamkhandi and " Hotannahalli. R.V.

" Mathad. B.R.

L. C. Civil Suit No. 199 of 1949

Virupax Hanmant Joshi, age 40, agri. of Hanagal Dist. Dharwar.....Plaintiff.

Against.

The Province of Bombay.....Defendant.

Claim Rs.5000/-

The plff sues for a declaration that the order of the Revenue Tribunal dated 8-8-47 is ultra vires and null and void and not binding on plff and a consequential - permanent injunction against the Province of Bombay restraining them from carrying out and giving effect to the said order of the Revenue Tribunal and in the alternative, Rs. 5000/- be awarded to plff by way of compensation and damages and future interest there and for costs of the suit

2. Plff alleges that the lands mentioned in para 1 of the plaint are situated at Savikeri in Hangal Taluka. The said village is malarious and contains only 8 to 10 houses. The aforesaid lands were forfeited to Govt. for non-payment of Judi. It is clear that the lands were full of weeds and shrubs and were not yielding enough to pay the Judi or assessment thereon .

3. The plff whose main source of livelihood is agriculture, wanted to go in for the lands and cultivate them personally, after effecting the necessary improvements. Hence, he applied on 22-1-1942 for the grant of the said - lands to him, and the Prant Officer, II Division, made an order on 21-2-1942 granting the said lands to plff at at Rs. 10/- per acre.

4. Against the said order of the Prant Officer, an appeal was filed by one Jayarayachar to the Collector and the Collector reversed the order of the Prant Officer

even without issuing notice of the appeal to the plff. Plff preferred an appeal to the Commissioner, Southern Division against the order of the Collector, and it was allowed on 23-12-1943 and the order of the Prant Officer was'resorted

5. Then the said Jayarayacharya purported to prefer an appeal to the Revenue Tribunal, though no such appeal was competent. The said appeal was filed beyond the period of limitation allowed by law, and should have been rejected initially. On the other hand, the Revenue Tribunal entertained the appeal and inspite of the objection raised by Government that it had no jurisdiction to entertain and hear the appeal, set aside the order of the Commissioner, Southern Division, on 8/8/1947 .

6. The order was not communicated to plff,.but plff filed a petition for Review of the said order after he came to know of the same, but the said petition was dismissed on 1-2-10-1948 .

7. It is submitted that the order of the Revenue Tribunal dated 8/8/1947 is without jurisdiction and ultra vires , and a mullity. It was not a Revenue case at all, and no appeal to the Revenue Tribunal was competent. Again Jayrarayacharya had no locus standi to file the appeal at all, and it should have been rejected on the ground that he was not competent to maintain the appeal. Further, when the Sanad was granted to plff in - pursuance of the order of the Commissioner, it was a case of concluded agreement lawfully entered into, and such arrangement is not liable to be set aside and could not be set aside. The Revenue Tribunal has no jurisdiction to interfere with such concluded agreement .

8. Without prejudice to the above contentions, it is submitted that the order is wrong on merits also and proper - procedure has not been followed. The date of hearing of the appeal was not communicated to plff. and no opportunity was given to him to place his case before the Revenue Tribunal . The reasons given for reversing the order ~~of~~ are unsound and unwarranted by the facts of the case .

29 -49

9. Though the order of the Revenue Tribunal was a nullity, in order to avoid, if possible, proceedings in Court and by way of a precautionary measure an application for review was made, and it was prayed that hearing should be given to plff. But no notice of opportunity was given to plff tp out forward his case before then and the application for review was dismissed on 1-10-1948. Plff took the lands on lease for 1942-43 and 1943-44 as he did not obtain possession of the lands as owner immediately after the order of the Prant Officer. He spent Rs. 500/- in 1942-1943 and in subsequent years after the order of the Commissioner, when a Sanad was granted to him, he has spent about Rs. 5000/- for the improvement of the lands as he was owner then and bona fide believed that he would continue to remain in possession and correctly appreciated the facts of the case and the observations made by them are erroneous. They are emphatically denied .

10. Under these circumstances, it has become necessary to file the suit for a declaration that the order of the Revenue Tribunal dated 8-8-1947 is ultra vires and null and void, and for consequential injunction that the said order should not be given effect to. In any event, if the Court considers that the above reliefs cannot be granted, plff claims, in the alternative, by way of compensation and damages Rs.5000/-.

11. The deftsby their written statement contends that the suit is time-barred under Art.14 of the Schedule 1 to the Indian Limitation Act, and the deft does not admit that the plff's main source of livelihood. It is submitted that the plff is not by profession an agriculturist but a merchant.

12. The plff's allegation that the order of the Bombay Revenue Tribunal dated 8th August 1947 is without jurisdiction and ultra vires is not admitted. The defendant submits that the Tribunal has jurisdiction to entertain the appeal. The plff's allegation that there was concluded agreement between himself and Govt. which could not be set aside is not correct and is hereby denied. The allegations in para 8 of the plaint are not admitted. The deft submits that the plff had the opportunity to represent his case before the Bombay Revenue Tribunal.

13. It is submitted that the defendant took the suit lands on lease in the year 1942-43 under the Assistant Collector's order and then sublet them at a higher rate and made profit. He is not a resident of the village in which the lands are situated. The Revenue Tribunal was, therefore, fully justified in setting aside the Commissioner's order and restoring that of the Collector. The plff's allegation that he had spent some amount on the improvements of the land is not admitted.

14. The order passed by the Bombay Revenue Tribunal is lawful and intra vires and the plff is not entitled to any relief either of declaration or by way of damages. The amount of damages claimed is also excessive. And for these reasons it is prayed that the suit of the plff be dismissed with costs.

15. The issues for decision as per Ex. 51 are as under :-

1. Whether plff is an agriculturist ?
2. Whether plff proves that the order of the Revenue Tribunal is without jurisdiction and ultra vires ?
3. Whether plff proves that there was an agreement between himself and the Govt. and if so, whether it was binding on the Govt. ?
4. Whether plff proves that he cultivated the lands personally and that he requires the lands bona fide for personal cultivation ?
5. Whether the suit is barred under Art. 14 of the Limitation Act. ?
6. Whether plff proves improvements and if so, at what cost
7. Whether plff can claim compensation and damages ? If so how much ?
8. What order ?

My findings are :-

1 :- No.	2 :- No.	3 :- No.
4 :- No.	5 : - Yes.	6 : - No.
7 : - Nil.	8 : - See below. Reasons.	

37 54

Reasons.

- 5 -.

The only important point that falls to be determined in this suit is whether the order of the Revenue Tribunal dated 8-8-1947 is without jurisdiction, ultra vires and a nullity.

The grounds upon which the order is challenged are (1) the grant of the suit lands to the plff is not a revenue case falling within the jurisdiction of the Revenue Tribunal (2) the appellant Jayaracharya was not competent to prefer an appeal to the Revenue Tribunal against the Commissioner's order dated 23-12-1943 and (3) the Revenue Tribunal had no jurisdiction to interfere with the agreement lawfully entered into between the plff on the one hand and the Government on the other embodied in the Sanad, which was granted to plff in pursuance of the order of the Commissioner. The other ground urged is that proper procedu was not followed by the Revenue Tribunal in that the date of the hearing of appeal was not communicated to the plff and hence, he was deprived of an opportunity to present his case before them.

Now the first point for determination is whether the grant of the suit lands to the plff was a revenue case falling within the jurisdiction of the Revenue Tribubal.

Section 4 of the Bombay Revenue Tribunal Act of 1939 gives jurisdiction to the Tribunal to entertain appeals and revise decisions in revenue cases as was vested in the Provincial Government immediately before the 1st day of April 1937 and clause (2) empowers the Tribunal to entertain appeals and revise decisions in all revenue cases arising under the provisions of enactments specified in the schedule in which such jurisdiction was vested in the Provinicial Government before the 1st of April 1937 of which the Bombay Land Revenue Code 1879 is one. Now the facts are the five lands in suit situated at Savikeri village had been forfeit ed to Government for non-payment of assessment. They belonged to one Nilkantha Kalo Deshapande. These lands were granted to the plff on restricted and impartible tenure on payment of occupancy price of Rs 10/- per acre by the Assistant Collector by his order dated 21st February 1942. Before this order was communicated to the plff, one Jayacharya Kallapur put in an application to the Collector for the grant of these lands on payment of occupancy

price of Rs 15/- per acre. In the alternative, he asked the lands to be put to public auction. This Jayacharya happened to be the occupant of the lands adjoining the suit lands. The Collector held an enquiry that the lands in the same village fetched Rs 150/- per acre and therefore he thought it just and eqyitable to put the lands to pub ic auction and therefore he set aside the Assistant Collector's order by his order dated 1st September 1942- The plff preferred an appeal to the Commissioner against the order of the Collecyor and the Commissioner by his order dated 23rd September 1943 set aside the order of the Collector. On 23rd ~~September 1943~~ February 1944 in pursuance of the order of the Commissioner the plff has been given a Sanad of the five lands in the suit, ~~apparently~~ apparently under Section 67 of the Land Revenue Code, subject to the condition that he should personally cultivate them. Then on the 3rd September 1944, Jayacharya went in appeal to the Revenue Trinunal. The Tribunal held that it had jurisdiction to deal with the appeal relating to the disposal of Government land after the Revenue Officrs had decided to grant it where the question raised was whether the procedure followed in disposal of the Government land was proper and whether the land should have been sold by public auction or by private sale and so, the Tribunal interfered within its jurisdiction with the order of the Commissioner and set it aside and the grounds for setting it aside were (1) the plff to whom the lands had been given ~~in~~ belonged to an advanced class and was not a resident of the village in which the lands were situated (2) after obtaining the lands he leased them at a higher rate and made profits thereby (3) he was not an agriculturist but a professional merchant and (4) the sale stastistics in the village showed that similar lands had fetched as much as Rs 150/- per acre.

It is argued on bejalf of the plff that the Government's own defence before the Tribunal was that the question of the grant of the Government land was not a revenue case falling within the jurisdiction of the Tribunal and therefore, the Government cannot now turn round and justify the order of the Revenue Tribunal which held that it had jurisdiction to interfere within its own

jurisdiction with the order of the Commissioner. So, the question is, what is a 'revenue case' falling within the jurisdiction of the Revenue Tribunal ? At page 879 of Gupte's Land Revenue Code, III Edition, ' revenue cases' are said to be cases involving legal right on the part of the Government to levy revenue or a legal duty on the part of the subject to it.... such legal right and duty are essential preliminary to the jurisdiction of the Tribunal'. Now what is a revenue case has been explained by the Revenue Tribunal in two decisions, one is the case No. 1144 of S.L.Latif, Ahmedabad District and the other is case No. 73 of Shri Shiddheshwar Devasthan, Sholapur. In the first case, the Tribunal held that if the claim did not involve revenue of Government but of the inadamadar then that was not a revenue case falling within their jurisdiction. In the latter case also they said that where the subject matter in issue is directly revenue then the case would presumably be a revenue case. Where on the other hand directly or indirectly, no question of revenue case arises or could arise, then it would not be a revenue case. Now in the present case though the Tribunal held that the case of the grant of land was not according to its decision a revenue case within their jurisdiction still they held that this case was slightly different, in that the question was not whether the land should be granted or not but whether after the Revenue Officers had decided to grant it, the procedure followed in disposing of it was proper and whether the land should have been sold by public auction or by a private sale. Government revenue is affected since the lands in this case have been granted for a fix price of Rs 10/- per acre when in the opinion of the Collector the sale statistics in the village show that similar lands had fetched as much as Rs 150/- per acre. It was contended on behalf of the plff that there was no evidence before the Revenue Tribunal to justify them in their conclusion that every acre of land situated in Savikeri village fetched as much as Rs 150/-. On the contrary the evidence now on record shows that it cannot exceed more than Rs 75/-. I am not quite

...nced of that but even then it is clear on the plff's own admission, that when every acre of land would fetch to the Government as much as Rs 75/-, the Government would certainly lose their revenue if they made a grant of the land to the plff at Rs 10/- per acre. Therefore there can be no doubt that the grant of the land to plff directly involves revenue of Government and therefore, in my opinion the Revenue Tribunal could interfere within its jurisdiction with the order of the Commissioner.

Thesecond ground of attack namely that Jayacharya was incompetent to maintain the appeal before the Revenue Tribunal was not pressed.

It is argued on behalf of the plff that because the Government has granted the patta to the plff in pursuance of the order of the Commissioner, the Revenue Tribunal could not interfere with that order as their decision reduces the concluded agreement between the parties embodied in the patta to a nullity and in this connection, the decision in the Government of Bombay vs. Mathurdas Lalaji Bhai, 44 Bombay Law Reporter, 405 is relied upon. This contention in effect amounts to this that the Revenue Tribunal has no jurisdiction to annul the conditions of the sanad granted to the plff under S. 67 of the Land Revenue Code. This argument is untenable. Section 211 of the L.R.Code gives the Provincial Government power to modify, annul , or reverse the order of the Collector. The Government's jurisdiction to entertain appeals and revise the decisions in revenue cases vested in Provinicial Government was later transferred to the Revenue Tribunal under the Act of 1939 by virtue of the provisions of S. 296(2) of the Government of India Act of 1935, so that the Revenue Tribunal was vested with the jurisdicti n to entertain appeals and revise decisions in revenue cases. Therefore it is not correct to say that the Revenue Tribunal could not within its jurisdiction interfere with the order of the Commissioner. Therefore, there is no substance in the contention that the Revenue Tribunal could not upset the arrangement, namely, the agreement between the parties embodied in the sanad issued in pursuance of the order of the Commissioner. I therefore hold that the order of the Revenue Tribunal is not without jurisdiction or ultra vires. I therefore record my findings on issues No. 2 and 3 against the plff.

Now, the question as to whether p;iff is or is not an agriculturist or whether he cultivated the lands personally does not survive although the evidence on record shows that the plff is not an agriculturist in view of my findings that the order of the Revenue Tribunal is intra vires.

I find that the plff's suit is barred under Art. 14 of the Limitation Act. It is contended on behalf of the plff that Article 120 governs the suit. In my opinion it does not. Article 14 provides one year's period for setting aside the act of order of an officer of Government in his official capacity and the period runs from the date of the act or order. This article cannot apply where the act of the Government in respect of which a declaration or injunction is sought is an act which is illegal or ultra vires and the declaration is sought on that basis. But in this case I find that the order of the Revenue Tribunal is not without jurisdiction and is not a nullity and so, it is binding on the plff unless and until it is set aside. It is necessary therefore for the plff to get rid of that order before he can obtain any relief. In the present case, the plff has claimed an injunction against the Government from carrying into the effect of the order of the Revenue Tribunal on the basis that it is ultra vires and null and void. Now the suit should have been filed within the one year of the order of the Revenue Tribunal as provided by Artdcle 14 of the Limitation Act. But we find that the suit has been filed nearly two years after the Revenue Tribunal's order and so it is out of time.

The plff has made an alternative case of damages. He claims Rs 5000/- as damages by way of compensation because he says that he spent Rs 500/- during 1942-43 immediately after the order of the Assistant Collector and Rs 500/- after the order of the Commissioner. In the first place, the plff has failed to prove that he has made any improvements in the lands, because beyond his mere word there is no evidence. I fail to see how plff can be awarded damages when the plff has made improvements, if any, at his own risk.

In the result, the plff's suit fails.

Order.

Plff's suit is dismissed with costs.

And the plff do bear the deft's costs.

28-2-1951.

Sd. S.M.B.hoj.

Civil Judge, Senior Division.

Decree.

In the Court of the Civil Judge, S.D.

at Hubli.

L. C. Suit No. 199 of 1949. Ex,

Pld ntiff :- Virupax Hanmant Joshi, age about 40, occu. Agricultural, residence Hangal, Dist. Dharwar.

Against.

Defendant :- The Province of Bombay.

claim Rs. 5000/-.

Suit filed on 14-6-1949.

Registered on 14-6-1 49.

Plaintiff begs to state as under :-

1. Description of the suit property :-

R.S.No.	Acre.	Assessment.
32	4-37	11-11-0
33	4-33	12- 7-0
34	8-15	10-1?-0
35	6-38	14-12-0
36	8-14-0	18- 0-0

2 The above lands are situated at Savikeri in Hangal Taluka. The said village is malerious and contains pnly 8 to 10 house only. The aforesaid lands were forfeited to Government for nonpayment of Judi. It is clear that the lands were full of weeds and shrubs and were not yielding enough to pay the judi or assessment thereon.

3. Plaintiff, whose main source of ~~maintenance~~ livelihood is agriculture wanted to go in for the lands to cultivate them personally, after effecting the necessary improvements. Hence he applied on 22-1-42 for the grant of the said lands to him, and the Prant Officer, II Dn. made an order on 21-2-1942 granting the said lands to Plff at Rs. 10/- per acre.

4. Against the said order of the Prant Officer an appeal was filed by one Jayacharya, to the Collector and the Collector reversed the order of the Prant Officer even without ~~assuming~~ issuing notice of the appeal to Plff. Plff preferred an appeal to the Commissioner, S.D. against the order of the Collector and it was allowed on 23-12-and the order of the Prant Officer was restored.

5. Then the said Jayacharya purported to prefer an appeal to the Rvenue Tribunal though such an appeal was not competent. The said appeal was filed beyond the period of limitation allowed by law and should have been rejected initially. On the other hand the Revenue Tribunal entertained the appeal and inspite of the objection raised by Government that it had no jurisdiction to entertain and hear the appeal, set aside the order of the Commissioner Southern Division on 8/8/47.

6. The order was not communicated to Plff, but filed a petition for a review of the said order after he came to know of the same, but the said petition was dismissed on 1/10/48.

7. It is submitted that the order of the Revenue Tribunal dated 8/8/47 is without jurisdictionx an ultra vires and a nullity. It was not a revenue case at all, and no appeal to the Revenue Tribunal was competent. Again Jayacharya had no locus standi to file the appeal at all, and it should have been rejected on the ground that he was not competent to maintain the appeal. Further when the Sanad was granted to Plff in persuance of the order of the Commissioner, it was the case of concluded agreement lawfully entered into, and such agreement is not liable to be set aside and could not be set aside. The Rev. Tribunal has no jurisdiction to interefere with such concluded agreement.

8. Without prejudice to the above contentions it isx submitted that the order is wrong on merits also and proper procedure has not been followed. The date of hearing of the appeal was not communicated to the Plff and no opportunity was given to him to place his case before the Rev. Tribunal. The reasons given for reversing the order are unsound and unwarranted by the facts of the case.

9. Though the order of the Rev, Tribunal was a nullity, in order to avoid, if possible, proceedings in court and by way of a precautionary measure an application for review was made and prayed that hearing should be given to Plff. But no notice or opportunity was given to Plff to put forward his case before thvm, and the application for review was dismissed on 1/10/48. Plff took the land on lease for 1942-43 and 1943-44 as he did not obtain possession of the lands as owner immediately after the order of

When a Sanad wasx granted to him, he has spent about Rs. 5000/- for the improvement of the lands as he was owner then and bona fide believed that he would continue to remain in possession as owner. The Rev. Tribunal has not properly and correctly appreciated the facts of the case and the observations made by them are erroeneous. They are emphatically denied.

10. Under these circumstances, it has become necessary to file suit for declaration that the order of the Rev. Tribunal dated 8/8/47 is ultra vires and null and void and for consequential injunction that the said order should not be given effect to. In any event, if the court considers that the above reliefs cannot be granted, Plff claims, in the alternative, by way of comepsationa and damages Rs. 5000/-.

11. Cause of action arose on 1/10/48 when the Rev. Tribunal rejected the petition for review and refuse dto review the order on 8/8/47.

12. The suit being for a declaration with the consequenti l relief namely, permanent injunction against deft, a fixed court fee of Rs. 16-4-0 is paid for this behalf and for the alternative relief court fee is paid on Rs. 5000/- the amount claimed by Plff by way of compensation and damages. The suit is valued for Rs. 5000/- for purpose of jurisdiction.

13. Notice has been duly delivered to the Collector, Dharwar, as required by law. The acknowledgement receive in this behalf is produced.

14. The Plffprays as follows :-

1. A declaration be granted that the order of Rev. Tribunal dated 8/8/47 is ultra vires and null and void and not binding on Plff and a consequential permanent injunction be issued against deft, the Province of Bombay, restraining them from carrying out and giving effect to the said order of the Rev. Tribunal.

2. In the alternative, Rs. 5000/- be awarded to Plf by way of comepnsation and damages and future interest thereon be awarded.

3. All the costs of the suit be awarded.

4. All other reliefs to which Plffmay be

entitled in law, equity and justice be awarded.

This suit coming on this day, the 28th Feb. 1951 before Shri. S.M.Bhoj, Civil Judge, S.D.Hubli in the presence of Shri. Jamkhandi and Shri. R.V.Hotanhalli pleaders for Plaintiff and Shri. B.R.Mathad, pleader for deft, it is hereby ordered and decreed as under :-

Plaintiff's suit is dismissed with costs, and the Plaintiff do bear the ~~xxxxx~~ deft's costs.

Bill of costs.

Plff.

	Rs.	as.	Ps.
Stamp for Ex.1.	350	- 0	- 0
Do.for Vakalat.	0	-10	- 0
Do. for applications Exs. 10,24,26,50,55,58,62,64,66,68 to 72,76,113,114	16	-10	- 0
Do for process.Exs.1&10	7	- 0	- 0
Do. for certifiedx copies & copying charges. Exs.29, 31,~~xx~~, to 35, 36 to 46 85 to 112, 116	23	- 3	- 0
For Takid. Ex. 59A	50	- 0	- 0
Pleader's fees Rs.5000/-	190	- 0	- 0
Total.	607	- 7	- 0
Applns. disallowed. 10,24,26,50,55,58,62, 64,69,72,76,113,114.	1	- 4	- 0
Balance.	606	- 8	- 0

Deft.

	Rs.	as.	Ps.
Stamp for applns. Exs.13,14,16,19to 22,48,54,59,61.	6	- 14	- 0
Pleader's fees.	190	- 0	- 0
Total.	196-	14	- 0
Applns. disallowed 13,14,16,19 to 22,54	5	- 0	- 0
Balance.	191-	14	- 0

Given under my han and the seal of the court on 28th Feb. 1951.

Sd. P.S.Kulkarni.

(Seal)

Sd. S.M.Bhoj.
Civil Judge,S.Dn.
30/3/51.

Shri.Jamkhindi & Hotanhalli Pls. for Plff.
Pleader for Deft.

Sd. R.V.Hotanhalli.

Sd. B.R.Mathad.

Suits:
Dharwar.

41 61

For a declaration that the order of the Bombay Revenue Tribunal dated the 8th August 1947 setting aside the order of the Commissioner, Southern Division, dated the 23rd December 1943 and restoring that by the Collector's order dated the 18th December 1943 in respect of the suit land is illegal and ultra vires and for permanent injunction.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 11443,
Bombay Castle, 19th July 1951.

Read Government Resolution, Legal Department No.4031 dated the 23rd March 1950.

Letter from the District Government Pleader, Dharwar No.227 dated the 8th March 1951, stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Hubli on the 2nd March 1951, when the following order was passed:-

In the Court of the Civil Judge (Senior Division) Hubli. Civil Suit No.199 of 1949. Virupax Hannamant Joshi ..... Plaintiff; vs. The State of Bombay. ..... Defendant.	

"Plaintiff's suit is dismissed with costs.
and the plaintiff do bear the defendant's costs."

Letter from the District Government Pleader, Dharwar No.469 dated the 8th June 1951 forwarding uncertified copies of the judgment and decree.

RESOLUTION: The result of the suit is recorded.

By order of the Governor of Bombay,

R.T.Katarki,
Original Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Dharwar,
The District Government Pleader, Dharwar.
The Solicitor Government Pleader Hubli
The Secy. Bombay Revenue Tribunal.
Submitted for Signature

PTM
18.7.51
J.S.
D.S. (Civil)

MRA.
3/7

Issued
19/7

Submitted after issue
file in S.DWR 7/50

Prin
20.7.50

S.S. NB
20/7

43

Presented on
4-6-1951
Sd/- B.A.Joshi,
Sheristedar.

On a Court fee stamp of Rs.93-12-0

69

Civil Appeal No.200 of 1951.

Exh. No.1

In the Court of the District Judge, Dharwar.
At Dharwar.

Appellant :- Virupaksha Hanamant Joshi of Hangal.
Versus.
Respondent :- The State of Bombay.

Claim Rs.

Appellant begs to appeal against the decree of the trial Court at Hubli in L.C.Suit No.199 of 1949 dated 28-2-1951, on the following among other grounds-

1. The decision of the lower Court is contrary to law and the evidence in the case.

2. Pleadings of the parties are not properly appreciated.

3. Proper issues are not framed.

4. The case has not been approached from a correct and legal stand point.

5. The lower Court erred in making out a new case for respondent.

6. The lower Court erred in holding that this was a Revenue case over which the Revenue Tribunal could exercise jurisdiction.

7. The provisions of the Revenue Tribunal Act in this behalf have not been properly appreciated.

8. It should have been held that the Revenue

Tribunal had no jurisdiction to decide whether it had or had no jurisdiction over the matter.

9. It is noteworthy that Government contested the appeal and pleaded that it was not a Revenue matter and that the Revenue Tribunal had no jurisdiction.

10. The lower Court erred in referring to the reasoning of the Revenue Tribunal which is irrelevant and also erroneous.

11. It may be noted that the facts of the earlier decisions of the Tribunal were entirely different from the facts of the present case.

12. The lower Court erred in not considering the case independently by reference to the provisions of law.

13. It should have been held that since there was a concluded contract and a regular patta was issued to plaintiff-appellant, it was not open for the Revenue authorities to interfere with the matter.

14. The law on the point and the decisions cited are not properly understood and applied.

15. The lower Court erred in ignoring the well established distinction between a mere order and a concluded agreement by issuing a Sanad or Patta, as in the present case.

16. Section 211 of the Land Revenue Code is not applicable to cases where agreements have been already entered into.

17. The lower Court ought to have held that Jayachar's appeal to the Revenue Tribunal was incompetent. The Revenue Tribunal was not competent to entertain it.

18. The observation that the said ground of attack, namely, that Jayachari was incompetent to maintain the appeal before the Revenue Tribunal was not pressed appears to have been made under a misapprehension.

45—71

19. It should have been held that the appellant was an agriculturist.

20. The reasoning of the trial Court is unsound and fallacious.

21. It should have been considered quite independently of the findings of the Revenue Tribunal, and irrespective of the question as to whether the order of the Revenue Tribunal is ultra vires or not.

22. The question of limitation is not properly and correctly appraoched and discussed.

23. It should have been held that article No.14 is obviously inapplicable to the present case.

24. Even otherwise, assuing that the said article is applicable, it should have been held that the suit is in time under the peculiar circumstances of the case.

25. The lower Court erred in not taking into consideration the circumstances that a Revision petition was filed and that the suit was filed within the one year after the rejection of the said petition.

26. The lower Court erred in not taking into consideration the voluminous documentary and oral evidence led in the case.

27. The conclusions of the lower Court are vitiated by the fact that the said evidence is not at all referred to .

28. It is submitted that the documentary and oral evidence in the case amply proves that appellant is an agriculturist and also that he has made immense improvements. The lower Court ought to have taken into consideration the decree of the Dharwar District Court in Appeal No.417 of 1948.

29. The very fact that about 35 acres of land have been converted into paddy plots is more than sufficient to establish the case of appellant.

30. In any event, the lower Court ought to have held that appellant was entitled to compensation as claimed.

31. The legal aspect of the case has not been considered at all.

32. The findings recorded against appellant are erroneous and unwarranted.

33. The lower Court erred in overlooking the fact that there is no evidence led for the respondent.

34. Appellant should have been held entitled to to a full decree as claimed.

35. Proper presumptions and inferences are not drawn and probabilities are not properly weighed.

Since the claim for damages appear to be doubtful in law, only a sum of Rs.1000/- is claimed in appeal in the alternative by way of damages and it is prayed that in case it is held to be permissible under law, appellant should be allowed to amend the appeal memo accordingly. Court fee is, therefore, paid on Rs.1000/-.

On these among other grounds it prayed that the decree of the trial Court be reversed and appellant's claim be decreed in full with all costs through out.

Dharwar.
4-6-1951.

Drafted and Presented
by
Sd/- V.G.Jamkhandi,
Pleader.

Admit - Notice

Sd/- D.K.Patil,
A.J. 23-7-191

[illegible]

C.A. 20[illegible]

47 73

Civ. A 14[illegible]

57.

1516—12,000—6-49—R4*

G. R., J. D., No. 8935, dated 21-10-19 and 3833, dated 22-12-21,
From the Regr. H. C., A. S., Bombay, C. P. C. Schedule I, Appendix G, No. 6.]

ಅಪೀಲಿನ ಸುಣಾವಣೆಗಾಗಿ ನೇಮಿಸಿದ ದಿವಸವನ್ನು ಕುರಿತು ರಿಸ್ಪೋಂಡೆಂಟನಿಗೆ ನೋಟೀಸು (ಅ. ೪೧, ಕಾ. ೧೪).

(ಫಾರ್ಮ ನಂಬರು ಆ. ಪರಿಶಿಷ್ಟ ಗ, ಶ್ರೀಡ್ಯೂಲ ೧.)

[illegible] ಇಲ್ಲಿಯ [illegible] ಜಜ್ಜ ಕೋರ್ಟನಲ್ಲಿ

ಮುಕ್ಕಾಮು [illegible] ಇಲ್ಲಿ. ನಿ॥

ದಿವಾಣಿ ಮುಕದಮೆ ನಂಬರು [illegible] ಸನ್ ೧೯೪ [illegible] ನೇ ಪೈಕಿ

[illegible] } ಅಪೀಲೆಂಟ.

ವಿರುದ್ಧ

[illegible] } ರಿಸ್ಪೋಂಡೆಂಟ.

ಮುಖಾಂತರ— [illegible] ಕೋರ್ಟನ ಸನ್ ೧೯೪ [illegible] ತಿಂಗಳಿನ

ಬೇಲೀಫನ ಹತ್ತರ— [illegible] ತಾರೀಖಿನ [illegible] ಮೇಲೆ ಅಪೀಲು [illegible]

ರಿಸ್ಪೋಂಡೆಂಟನಾದ [illegible]

ತಾರೀಖು— ಇವನಿಗೆ.

ನಿನಗೆ ನೋಟೀಸು ಕೊಡುವದೇನಂದರೆ, ಈ ವ್ಯಾಜ್ಯದಲ್ಲಿ [illegible] ಕೋರ್ಟನಿಂದ

Stuff [illegible] 12/7

ಮಾಡಲ್ಪಟ್ಟ ಹುಕುಮನಾಮೆಯ ಮೇಲೆ ಉಪ್ಪೇಕೆರೆ ಇವನಿಂದ ತಾರೀಖು
ಅಪೀಲ ಮಾಡಲ್ಪಟ್ಟಿದ್ದು ಅದು ಈ ಕೋರ್ಟನಲ್ಲಿ ರಜಿಸ್ಟರು ಮಾಡಲ್ಪಟ್ಟಿದೆ, ಮತ್ತು ಈ ಅಪೀಲಿನ ಸುನಾವಣಿಯ
ಬಗ್ಗೆ ಸನ್ ೧೯ ನೇ ಇಸವಿಯ 2 ತಿಂಗಳ 23 ತಾರೀಖು ಈ ಕೋರ್ಟನಿಂದ
ನೇಮಿಸಲ್ಪಟ್ಟಿದೆ.

ನಾಯುರ.

ನೀನು ಸ್ವತಃ [illegible] ಯಾ ಅಪೀಲಿನಲ್ಲಿ ನಿನ್ನ ಸಲುವಾಗಿ ಕೆಲಸ ನಡಿಸಲಿಕ್ಕೆ ಕಾಯದೆಯಿಂದ
ಅಧಿಕಾರ ಪಡೆದಂಥ ಬೇರೊಬ್ಬ ಮನುಷ್ಯನು ನಿನ್ನ ಬಗ್ಗೆ ಹಾಜರಾಗದಿದ್ದರೆ, ನಿನ್ನ ಪರೋಕ್ಷದಲ್ಲಿ ಅಪೀಲಿನ
ಸುನಾವಣಿಯಾಗಿ ನಿರ್ಣಯವಾಗುವದು.

ಬಾಬುದ್ದಯ.
23-2-[illegible]

ಈ ಹೊತ್ತು ಸನ್ ೧೯ ನೇ ಇಸವಿಯ ೬ ತಿಂಗಳ ೨ ನೇ
ತಾರೀಖಿನ ದಿನ ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

Received on 10/7/51

THE DIST. JUDGE

PP 62/1-14

ಅಜ್ಜ.

ಟೀಪು.—ಅಮಲ್ ಬಜಾವಣಿಯನ್ನು ನಡಿಸಲಿಕ್ಕೆ ಹುಕುಮು ಮಾಡಲ್ಪಟ್ಟರೆ, ಅದನ್ನು ಈ ನೋಟೀಸಿನಲ್ಲಿ ಕಳಿಸಬೇಕು.

49. 91

A Suits:
Dharwar.
For a declaration that the order of the Bombay Revenue Tribunal dated the 8th August 1947 setting aside the order of the Commissioner, Southern Division, dated the 23rd December 1943 and restoring that by the Collector's order dated the 18th December 1943 in respect of the suit land is illegal and ultra vires and for permanent injunction. /A

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 12238
Bombay Castle, 31st July 1951.

Read Government Resolution, Legal Department No.11443, dated the 19th July 1951.

B In the Court of the Civil Judge(Senior Division), Hubli.

Civil Suit No. 199 of 1949.

Virupax Hannamant Joshi..... Plaintiff;
vs.
The State of Bombay..... Defendant. /B

Letter from the District Government Pleader, Dharwar No. 627, dated the 17th July 1951 requesting Government's sanction to the defence of the Civil Appeal No. 200 of 1951 filed by the plaintiff in the suit noted in the margin.

Letter from the Collector of Dharwar No. L.A.W.-496, dated 21st July 1951 forwarding the above.

RESOLUTION:- Sanction is accorded to the defence of Civil Appeal No. 200 of 1951 in the Court of the District Judge, Dharwar on the lines of the brief accompanying Government Resolution, Legal Department No. 4031, dated the 23rd March 1950 and the favourable grounds contained in the judgment of the Civil Judge (Senior Division), Hubli dated the 2nd March 1951.

By order of the Governor of Bombay,

Issued 31/7 Original

(R.T. Katarki)
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Dharwar,
The District Government Pleader, Dharwar,
The Sub Government Pleader, Hubli,
The Secretary Bombay Revenue Tribunal, Bombay.

Submitted for sign
31/7

HSP/28/7

Subtd after issue
file in S. DWR 7/50
DC
7/8
H Lohr

92

lu
1-8

S. Dwr. 7/50
[illegible]
7/8/51

57

Received on 4-6-51
Registered on 7-6-51
Decided on 30-6-52
Duration 1 year and 26 days

In the Court of the Sessions Assistant Judge,
Dharwar. at Dharwar.

Civil Appeal No.200 of 1951, from the Judgment and Decree in L.C.Suit No.199 of 1949, of the Court of the Civil Judge, Senior Division, Hubli. (Shri.S.M.Bhoj).

Pleaders :-

Shri. V.V.Jamkhandi. Appellant :- Virupaxappa Hanmant Joshi, age 42, occupation agriculture, of Hangal.

Versus.

R.M.Patil, D.G.P. Respondents:- 1. The State of Bombay.

Claim Rs. 5000/-

Judgment.

1. This is an appeal from the judgment and decree of the learned Civil Judge, Senior Division, Hubli, dismissing L.C.Suit No.199 of 1949.

2. The five survey numbers in suit situate at Savikeri in Hangal Taluka belonged to one Nilakanth Kalo Deshpande and had been forfeited to Government for non payment of judi. On 21-1-1942, the Assistant Collector, Dharwar, passed an order granting these lands to the plaintiff on a restricted and impartible tenure on payment of the occupancy price of Rs.10/- per acre. In the meanwhile, however,

i.e., on 16th Feb '42, one Jayarachar of Kallapur had also applied to the Collector for a grant of the very survey numbers stating that he was willing to pay the occupancy price of Rs.15/- per acre and that the lands were adjacent to his lands in the village. This application came in due corse before the Assistant Collector on the very day he had sanctioned the grant of lands to the plaintiff. So, Jayarachar appealed to the Collector who set aside the Prant Officer's Order on the 1st of September 1942 and directed that the land should be sold by public auction as, in his opinion, the village lands fetched high prices. The plaintiff, thereupon, appealed to the Commissioner who by his order dated 23rd December 1943 set aside the Order of the Collector and restored that of the Assistant Collector. He followed this order by the issuee of a sanad on 23rd February, 1944. Aggrieved by the order of the Commissioner, Jayarachar filed an appeal petition dated 3rd September, 1944. On 8th August 1947, the Revenue Tribunal set aside the order passed by the Commissioner and restored that of the Collector directing that the lands should be sold by public auction.

3. The plaintiff, thereupon, filed the present suit, on 14-6-1949 for a declaration that the order of the Revenue Tribunal was ultra vires and a nullity and for an injunction restraining the State of Bombay who is the defendant, from giving effect to the order of the Tribunal or in the alternative for damages. The plaintiff alleged interalia that the Revenue Tribunal had no jurisdiction to entertain the appeal as this was no revenue case at all and that in any case, the Sanad having been granted to the plaintiff in pursuence of the Order of the Commissioner, there was a concluded agreement and the Revenue Tribunal had no jurisdiction

53

to interfere with it. It was also contended that the Tribunal had no jurisdiction as the appeal was filed by Jayarachar who had no locus standi to file the appeal. The defendant contended that the Tribunal had every jurisdiction to deal with the case, that the order passed by it was valid, that there was no concluded agreement which cannot be set aside or modified and that the suit was also barred by time under Article No.14 of the Indian Limitation Act.

4. The learned Judge held that the order of the Revenue Tribunal was not without jurisdiction and ultra vires and that the suit was further barred under Article No.14 of the Indian Limitation Act. Accordingly, the suit was dismissed.

5. The plaintiff has come in appeal and two points were urged before me. One was that the Tribunal had no jurisdiction as this was not a revenue case and there had been a concluded agreement. Secondly, it was argued that article No.14 of the Indian Limitation Act had no application. The issues for determination, therefore, are -

1. Is the order dated 8-8-1948 passed by the Revenue Tribunal, ultra vires and nullity ?
2. If so, is the suit barred by article No.14 of the Indian Limitation Act ?

6. My findings are -

1. No. 2. Does not survive.

Reasons.

7. The order of the Revenue Tribunal is objected to as ultra vires on three main grounds. One is that

this was not a revenue case. Secondly the appeal by Jayarachar was in competant and the Tribunal had no jurisdiction to entertain it. In the third place, there was already a concluded agreement in pursuence of the order passed by the Commissioner and the Tribunal could not interefere with it. Section 4 of the Bombay Revenue Tribunal Act, 1939, vests the Tribunal with authority to entertain appeals and revise decisions in revenue cases as was vested in the Provincial Government before the 1st of April '37. The Tribunal is invested with authority in revenue cases arising under the provisions of Acts specified in the schedule to that Act. The schedule refers to the Bombay Land Revenue Code, 1879 and says that the jurisdiction vested in the Provincial Government under section 204 and 211 of the Land Revenue Code shall be vested in the Tribunal in respect of revenue case . It is, hence, clear that the Revenue Tribunal has jurisdiction to pass orders under sections 204 and 211 of the Bombay Land Revenue Code in all revenue cases in respect of which the Provincial Government had jurisdiction prior to 1-4-1937. I have not been referred to any exhaustuve definition of the expression 'Revenue Case' but the ordinary meaning to be attached to that expression would be ' a case involving revenue '. Gupte has explained in his Bombay Land Revenue Code, 3rd Edition, page 879, that a revenue case is a case involving a legal right on the part of the Government to levy revenue and a legal duty on the part of the subject to it. Where, therefore, the revenue payable to the Government is in question, the Tribunal gets jurisdiction to decide the case. The facts of the present case show that the dispute clearly related to revenue recoverable by the Government. The Assistant Collector felt that the lands may be granted to an occupancy price of Rs.10/- per acre. The Collector thought otherwise, as

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in his opinion, better bids would be available on public auction. The Commissioner agreed with the order passed by the Assistant Collector and the Revenue Tribunal has, in turn, agreed with the Collector. It seems that the Government has contended in this very case before the Tribunal that this being a case of grant of land was not a revenue case. The Tribunal has acknoledged that the question whether a land should be granted or not has been always held by it not be a revenue case, but they interefered in this particular case as the question involved was different. To quote the opinion of the Tribunal " The question is not whether land should be granted or not but whether after the revenue authorities has decided to grant it the procedure followed in disposing of it was proper and whether the land should have been sold by public auction or by private sale. The Government revenue is affected since the lands in this case have been granted at a fixed price of Rs.10/- per acre when, in the opinion of the Collector, the sales statistics in the village show that similar lands had fetched as much as Rs.150/- per acre." In that view, the Tribunal hold that it was a revenue case and, with respect, I agree with that view. No decided case has been cited before me to show that this is not a revenue case and, therefore, I hold that under section 4 of the Bombay Revenue Tribunal Act, 1939, the Tribunal had jurisdiction to entertain this case.

7. It was next contended that the Tribunal should not have entertained the appeal from Jayarachar in this matter because he had no locus standi. The contention is that the appeal filed by Jayarachar should normally give the Tribunal its jurisdiction and if the appeal itself is not competent the

jurisdiction of the Tribunal is gone. I am unable to agree with this proposition. Whether Jayarachar had a right to appeal to the Tribunal or not is quite different from the question whether the Tribunal itself has jurisdiction to entertain such a case. Apparently, Jayarachar appealed on the ground that he was a neighbouring occupant and was prepared to offer a higher occupancy price than the plaintiff. But assuming that he had no locus stnadi the powers of the Tribunal under section 211 of the Land Revenue Code are very extensive. Section 204 deals with appeals and section 211 deals with revisional jurisdiction. The Tribunal which succeeds to the power of the Provincial Government can under section 211, call for and examine the record of any inquiry or proceedings of any subordinate revenue officer for certain purposes and may modify, annul or reverse any decision or order passed by the subordinate officer. Hence the Tribunal has jurisdiction under section 211 to examine the proceedings of the Commissioner and pass appropriate orders whether or not Jayarachar files an appeal. The jurisdiction of the Tribunal is not made dependant on any appeal being filed to it. The Tribunal may come to know from whatever source the illegality or the propreity of any decision of a subordinate revenue officer and, thereupon, it has the right and power to call for and examine the record and pass the necessary orders. In my opinion , therefore, it is wrong to argue that Jayarachar's appeal was incompetant and, therefore, the Tribunal had no powers to pass the neccssary orders.

8. It was next contended that there was a concluded agreement in pursuence of the order of the Commissioner with the plaintiff and the Tribunal has no jurisdiction to interfere with it. In support of this proposition, the case of Governmen of Bombay Vs. Mathuradas, 44 B.L.R. 405 was cited before me. In my opinion, the facts are quite distinguishable. In

that case, non-agricultural assessment had been finally levied at a certain rate by the Collector and a sanad was issued for a term of years under section 63 of the Land Revenue Code on the basis of an agreement between the Government and the occupant charging a certain amount of assessment for the permitted non-agricultural use of the land. Some ten years later it was discovered by a Deputy Collector that the land was being used for a commercial purpose and, thereupon, it was recommended that non-agricultural assessment at the highest rate should be levied. It was held that this could not be done because already there was a concluded agreement between the Government and the occupant. As pointed out in the Government of Bombay Vs. Ahemedabad Sarangpur Mills, Co., Ltd., 46 B.L.R.413, the concluded agreement is the agreement made by the Collector not as a subordinate officer of the Commissioner but as the agent for the Secretary of State and entered into by the Collector in that capacity with the third party. In such a case, the Commissioner cannot cancel such an agreement. Sections 204 and 211 relate to the appellate and revisional jurisdictions of the superior revenue authorities in respect of the orders and decisions of the subordinate revenue officers. The orders which they can decide in appeal or revise are orders which are passed by the subordinate revenue officers but where a concluded agreement takes place between the Collector, as a representative of the Secretary of State, with the third party, there is no order or decision of a subordinate revenue officer which is either appealable or revisable under section 204 and 211 of the Land Revenue Revenue Code. The facts in the present

case do not show that there was any such concluded agreement. The question all along was on what terms the land should be granted. Decision had been already taken that the lands were to be granted. The question for decision before the Assistant Collector and all the authorities above him was with regard to the terms on which the grant should be made. Different views were taken by different authorities and the Tribunal as the final authority has decided that the land should be sold by public auction. In the meantime, however, the Commissioner, as is usual with him, directed that the Sanad may be issued in pursuence with the order that he had passed. But that order, apparently, was liable to be modified or annulled by the Tribunal in its appellate or revisional jurisdiction. I am not prepared to hold that there was any concluded agreement in this case in the sense that either under section 65 or section 67 of the Land Revenue Code, there had been a grant on the terms finally settled as between the State, on the one hand, and the plaintiff, on the other. What is called a 'sanad' in this case is Exh.81 which is a kabulayat passed by the plaintiff in form No.F-1 under rule 37(4) of the Land Revenue Code. This kabalayat is passed in pursuence of the order of the Commissioner which as I have already shown, is liable to be annulled or modified by the Tribunal. Therefore, there is no finality to the terms of the kabalayat and, hence, it cannot be regarded as a concluded agreement between the Government, on the one hand, and the plaintiff, on the other. The position is not different from the Privy Council case of Secretary of State Vs. Anant Krishnaji 36 B.L.R. 242, in appeal from Anant Krishnaji Versus Secretary of State 33 B.L.R. 213. The facts there go to show that the Collector first made a grant of lands to Anant Kri hnaji subject to two conditions, namely, that the lands should be held free from payment of occupancy price and that the lands should be free of assessment ~~till~~

till they were brought under cultivation. In those terms, Anant Krishnaji passed a kabalayat and entered into possession. The Commissioner took a different view regarding the conditions and directed that the proper occupancy price according to the full market value of the lands should be recovered and that the ordinary land revenue should be recovered from the year 1919-20. Our High Court held the view that the Commissioner's Order was invalid. But in appeal, it was held that the Commissioner's order was an order passed under section 211 of the Land Revenue Code and was therefore, valid. The Kabalayat passed by Anant Krishnaji in between the Collector's Order and the Commissioner's Order did not trouble either the High Court or the Privy Council, apparently, because the kabalayat had been passed by the Collector subject to such orders that may be eventually passed in the matter by the higher authorities. It will be wrong to hold that such kabalayats either under rule 37 or rule 39 framed under the Bombay Land Revenue Code are concluded agreements between the the State, on the one hand, and the occupant, on the other, till the matter is finally settled so far as the revenue authorities themselves are concerned. In my view, the kabalayat Exh.81 was not a concluded agreement between the State, on the one hand, and the occupant on the other, and did not have the effect of preventin the Revenue Tribunal from revising the order of the Commissioner.

8. In conclusion, therefore, it must be held that the order passed by the Revenue Tribunal was an order not without jurisdiction.

9. The second issue about limitation does not survive as it is held that the order was not ultra vires or a nullity. It would remain for consideration only if the finding had been that the order was a nullity. The point was not seriously argued before me and I do not propose to give any decided view in the matter. But I would like to point out that there are serious difficulties in applying article 14 of the Indian Limitation Act. In the first place, the article applies only to an act or order of an officer of the Government acting in his official capacity. I doubt very much if the Revenue Tribunal can be called an officer of the Government. The Tribunal succeeds to the jurisidction of the Provincial Government and its order is practically the order of the Provincial Government and not an order of an officer of the Government. Secondly, it has been recognised that where an order is ultra vires or a nullity, there is nothing which needs to be set aside. See Shivaji Vs. The Collector of Ratnagiri" 11 Bom.429 and also Lammanrao Vs. Shrinivas 54 Indian Appeals 380 where it is noticed that if the order is illegal, the plaintiff was not bound to file a suit to set it aside but is entitled to wait until it was enforced against him and the time to enforce it against him should give him a good cause of action. As at present advised, I feel considerable doubt as to whether the suit would be barred under article 14 of the Indian Limitation Act assuming that the order was ultra vires or a nullity.

10. In the result, the appeal fails and must be dismissed with costs.

O r d e r

The appeal is dismissed with costs.

30th June '52. Sd/- D.G.Palekar,
Extra Assistant Judge.

61 1.0

Suits:
Dharwar.
For a declaration that the order of the Bombay Revenue Tribunal dated the 8th August 1947 setting aside the order of the Commissioner, Southern Division, dated the 23rd December, 1943 and restoring that by the Collector's order dated the 18th December 1943 in respect of the suit land is illegal and ultra vires and for permanent injunction.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 15742/E
Bombay Castle, 24th September 1952.

Read Government Resolution, Legal Department No. 12238, dated 31st July 1951.

Letter from the District Government Pleader, Dharwar No. 588, dated the 12th July 1952, stating that Appeal No. 200 of 1951 in the suit noted in the margin was decided by the Extra Assistant Judge, Dharwar, on 30th June 1952, when the following order was passed :-

In the Court of the Civil Judge (Senior Division), Hubli.	
Civil Suit No.199 of 1949.	
Virupax Hannamant Joshi ... Plaintiff;	
vs.	
The State of Bombay. ... Defendant.	

" The appeal is dismissed with costs. "

Letter from the District Government Pleader, Dharwar, No. 644, dated the 30th July 1952, forwarding uncertified copy of the judgment.

RESOLUTION : The result of the appeal is recorded.

By order of the Governor of Bombay,

original

R T Katarki

(R.T. Katarki)
Deputy Secretary to Government.

To

The Revenue Department,

The Collector of Dharwar,

The District Government Pleader, Dharwar,

The Secretary, Bombay Revenue Tribunal, Bombay.

Issued 24/9

s. 17/9.

Subtd for sign
AC
21/9 D.S. (civil)

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File in S. Dwr. 4/50

NB
25.9.52

(District:Dharwar.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Second Appeal No. 1508 of 1952.

(1) Virupaksha Hanmant Joshi, of Hangal, District Dhawar. ... ...) Appellant. (Orig.Plff.)

Versus.

(1) The State of Bombay. ... ... Respondent. (Orig. Deft.)

Claim Rs.5/- for both purposes.

The Appellant named above begs to prefer an appeal to this Hon'ble Court from the decree dated 30-6-1952 passed by the Extra Assistant Judge of Dharwar in Appeal No.200 of 1951 and to set forth the following grounds of objection to the decree appealed from namely:--

(1) That the findings of the lower Court on the first issue is wrong.

(2) That the Lower Court ought to have held that the order of the Revenue Tribunal was ultra vires and was a nullity.

(3) That the Lower Court ought to have seen that the case in which the order of the Revenue Tribunal was passed not a revenue case.

(4) That the appeal by Jakarachar was incompetent and the tribunal had no jurisdiction to entertain it.

(5) That there was already a concluded agreement between the Government and the Appellant in accordance with the order of the Commissioner and the same could not be superceded by the order of the Tribunal.

(6) That the Lower Court ought to have seen that Government itself had contended in this very case before the Tribunal that it was not a revenue case.

(7) That the Lower Court erred in holding that the Tribunal had jurisdiction to entertain the present case.

(8) That the Lower Court ought to have held that there was finali to the terms of the agreement (Kabulayat.)

(9) That the Lower Court has not applied the correct rule of to the facts of the present case.

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(10) That the Tribunal ought to have entertained the application before it when the same had been presented to it after considerable delay.

B O M B A Y.)
Dated 6-10-1952.)

Sd/- K. G. Datar.
Advocate for the Appellant.

N.B.:- The alternative relief for damages is given up and the claim in appeal is limited to declaration and injunction and therefore the fixed Court fee of Rs.6-4-0 is paid in appeal.

Sd/- K. G. Datar.

Advocate for the Appellant.

PKD/-

(5)

IN THE HIGH COURT OF JUDICATURE, APPELLATE SIDE, BOMBAY

APPEAL NO. 1508 OF 1952 FROM APPELLATE DECREE

Vimpaksha Hanmant Joshi.)
) Appellant.
Represented by Advocate K.G.Datar.) (Pl/ff)

Versus.

The State of Bombay. ...) Respondent
(Deft.)

Claim.Rs. 5/- for all purposes.

No. 1329 of 1952.

From

The Deputy Registrar,
High Court, Appellate Side, Bombay.

To
*The Secretary, Legal Department, for the State of Bombay.

Bombay, 31st December 1952.

Sir,
The Appellant abovenamed/having presented an appeal from the decision of the Extra Assistant Judge of Dharwar in Appeal No. 200 of 1951 and the same having been registered in this Court, and this court having on 4-12-1952 ordered notice to issue, I have the honour to inform you that the hearing of the said appeal will take place on the 23rd day of February 1953, or on any subsequent day which to this Court may seem convenient; and that if no appearance is made on your behalf, it will be heard and determined in your absence.

*To be served on the Govt. Pleader, High Court.

Yours faithfully,

Sd/- x x x

for Deputy Registrar.

Recd. Notice on 2-1-1953.

Sd/- ~~XXXXXXXXX~~
V.T.Gambhirwala.

for Govt. Pleader, High Court.

69

Suits:
Dharwar.
For a declaration that the order of the Bombay Revenue Tribunal dated the 8th August 1947 setting aside the order of the Commissioner, Southern Division, dated the 23rd December, 1943 and restoring that by the Collector's order dated the 18th December 1943 in respect of the suit land is illegal and ultra vires and for permanent injunction.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 16311/E
Bombay Castle, 26th July 1955.

Read Government Resolution, Legal Department, No. 15742/E dated the 24th September 1952.

	Endorsement
In the Court of the Civil Judge (Senior Division), Hubli. Civil Suit No.199 of 1949. Virupax Hannamant Joshi .... Plaintiff; Versus The State of Bombay. ,... Defendant.	from the ~~District~~ High Court Government Pleader, ~~Dharwar~~ requesting Government's sanction to the

defence of the Second Appeal No.1508 of 1952 filed by the plaintiff in the suit noted in the margin.

Letter from the Collector of Dharwar No.L.A.W./496 dated 5th September 1953, forwarding the above.

R E S O L U T I O N:- Sanction is accorded to the defence of the Second Appeal No.1508 of 1952 in the High Court, Bombay, on the favourable grounds contained in the judgment of the Extra Assistant Judge, Dharwar dated 30th June 1952.

By order and in the name of the
Governor of Bombay,

Original 22/7

(D.P. Shikhare)
Deputy Secretary to Government.

To

Revenue Department,
The Collector of Dharwar,
The District Government Pleader, Dharwar,
The Secretary, Bombay Revenue Tribunal, Bombay,
The Government Pleader, High Court, Bombay.

Nair/-

Submitted for signature
22/7

J.S. (Civil)

Submitted

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PR

27

Supdt

S. Dharwar 27/50
29-7-55

Copy ... 23/3/55
Copy ready on 23/7/55
Copy ... on 30-8-55
Sent by ... on
Assistant Superintendent

APPEAL No. 1508 OF 1952 FROM APPELLATE DECREE.

WITH CIVIL APPLICATION No. 135 OF 1955.

Virupaksha Hanmant Joshi (Original Plaintiff) ... ... Appellant;

versus

The State of Bombay (Original Defendant) ... ... Respondent.

Second Appeal against the decision of D. G. Palekar, Esquire, Extra Assistant Judge, at Dharwar, in Appeal No. 200 of 1951 from the decision of S. M. Bhoj, Esquire, Civil Judge, Senior Division, at Hubli, in Long Cause Civil Suit No. 199 of 1949.

Mr. K. G. Datar, Advocate for the Appellant.

Mr. V. S. Desai, Additional Assistant Government Pleader, for the Respondent.

(CORAM.—Shah, J.)

7th February 1955.

Oral Judgment.—Revision Survey Nos. 32, 33, 34, 35 and 36 of the village of Savikeri, Taluka Hangal, District Dharwar, were originally of the occupancy of one Nilkanth Kalo Deshpande. For non-payment of Judi payable by Nilkanth Kalo Deshpande the lands were ordered to be forfeited. On 9th February 1942 one Virupaksha Hanmant Joshi (whom I will hereafter refer to as the plaintiff) applied to the Assistant Collector of Dharwar for granting the lands to him. On 16th February 1942 one Jayarachar Kallapur applied to the Collector for granting those lands to him. On the 21st February 1942 an order was passed by the Assistant Collector granting the lands to the plaintiff on payment of an occupancy price of Rs. 10 per acre. Against the order dated the 21st February 1942 Jayarachar Kallapur appealed to the Collector, and by his order dated the 1st September 1942 the Collector of Dharwar set aside the order passed by the Assistant Collector and directed that the occupancy rights in those lands be sold by public auction. The plaintiff appealed to the Commissioner against the order of the Collector, and on the 23rd December 1943 the Commissioner, Southern Division, set aside the order passed by the Collector of Dharwar, and restored the order passed by the Assistant Collector. Pursuant to the order of the Commissioner the plaintiff executed a Kabulayat to hold the lands on the terms incorporated therein. Jayarachar appealed to the Revenue Tribunal against the order of the Commissioner, Southern Division. On the 8th August 1947 the Revenue Tribunal set aside the order of the Commissioner and restored the order passed by the Collector of Dharwar. An application by the plaintiff to review the order passed by the Revenue Tribunal was rejected by the Tribunal. Thereafter on the 14th June 1949 the plaintiff filed suit No. 199 of 1949 in the Court of the Civil Judge, Senior Division, at Hubli against the State of Bombay for a declaration that the order of the Revenue Tribunal dated the 8th August 1947 was *ultra vires* and null and void and that the same was not binding upon the plaintiff, and for a permanent injunction restraining the State of Bombay from carrying out and giving effect to the order of the Revenue Tribunal. In the alternative the plaintiff claimed Rs. 5,000 as damages with future interest and costs of the suit.

The learned trial Judge dismissed the plaintiff's suit. In appeal to the District Court at Dharwar the decree passed by the trial Court was confirmed. The plaintiff has come to this Court in second appeal.

Two questions arise for determination in this second appeal (i) whether an appeal was competent to the Revenue Tribunal against the order passed by the Commissioner (Southern Division); and (ii) when in pursuance of the order of the Commissioner the plaintiff executed a Kabulayat and entered into possession of the lands and continued in possession thereof, the order passed by the Commissioner was liable to be set aside by the Revenue Tribunal in exercise of its powers under the Bombay Revenue Tribunal Act of 1939.

Section 4 of the Bombay Revenue Tribunal Act XII of 1939 sets out the powers and functions of the Revenue Tribunal. By sub-section (*1*) of that section the Tribunal is invested with 'jurisdiction to entertain appeals and revise decisions in revenue cases as was vested in the State Government immediately before the first

day, of April 1937 under any law for the time being in force.' Under sub-section (2) of section 4 it is provided that 'in particular and without prejudice to the generality of the foregoing provision i.e. under sub-section (1), the Tribunal shall have jurisdiction to entertain appeals and revise decisions—(a) in all revenue cases, arising under the provisions of the enactments specified in the schedule in which such jurisdiction was vested in the State Government immediately before the first day of April 1937, and (b) in all cases specified in section 9.'

Now the initial question which falls to be determined is whether a case in which a dispute is raised whether the land, which is vested in the State Government by forfeiture, should be sold by public auction or should be given by private treaty, is 'a revenue case', within the meaning of section 4 of the Bombay Act XII of 1939. It is unfortunate that the Act does not define the expression 'revenue cases'. Even the expression 'revenue' has not been defined in the Bombay Land Revenue Code, though provisions have been made in various sections of the Bombay Land Revenue Code relating to either 'land revenue' or 'revenue payable to Government': *see* sections 43, 48, 51, etc.

Mr. Datar contends that a 'revenue case' is one in which the issue directly and substantially arising for determination is one relating to the right of the Government to land revenue. He contends that in the present case the right of Government to recover land revenue was never in dispute before any of the revenue officers and therefore the dispute was not a 'revenue case'. In my view the expression 'revenue case' cannot be construed in that limited sense suggested by Mr. Datar. It was intended by the Legislature to confer upon the Revenue Tribunal jurisdiction to decide all disputes which concern revenue due or payable to or which would become due or payable to Government. It cannot be denied that land revenue would be payable by any person to whom the land in dispute is granted, either by public auction or by private treaty. The Assistant Collector of Dharwar by his order dated the 9th February 1942 directed that the lands be granted to the plaintiff on the plaintiff paying an occupancy price of Rs. 10 per acre. The Collector took the view that the proper procedure in such cases was to sell the land by public auction. The area of the lands in dispute appears to be extensive. It exceeds 33 acres, and it may be reasonable to presume that a very much larger amount than Rs. 10 per acre would be realized if the lands are granted by public auction. If the Collector took the view that a larger amount would be realized as occupancy price by selling the occupancy right to an intending purchaser by public auction, and that amount would be irretrievably lost to the State if the order of the Assistant Collector is to be carried out, I fail to see why the dispute may not be regarded as a 'revenue case' within the meaning of section 4 of the Bombay Act XII of 1939. If the dispute related to a 'revenue case', evidently the Bombay Revenue Tribunal had jurisdiction to entertain the proceedings taken at the instance of Jayarachar Kallapur. It is unnecessary to decide the question whether the Bombay Revenue Tribunal had jurisdiction to entertain an appeal at the instance of Jayarachar, because in any event the Revenue Tribunal had jurisdiction to entertain an application in revision, and to revise the order of the Commissioner.

The second contention raised by Mr. Datar that, when the plaintiff executed a kabulayat and entered into and continued to be in possession in pursuance of the order of the Commissioner, the order passed by the Commissioner was not liable to be set aside by the Revenue Tribunal in exercise of its powers under the Bombay Revenue Tribunal Act, XII of 1939, has now been concluded by Full Bench decision of this Court: in State of Bombay *v.* Chhaganlal Gangaram Lavar (1954) 56 Bom. L.R. 1084. It was held in that case that 'where a grant has been made under section 62 of the Bombay Land Revenue Code, 1879, and a kabulayat has been taken in pursuance of the grant under rule 37 of the Land Revenue Rules, 1921, the order making the grant and the kabulayat can be modified or cancelled under section 211 of the Code.' In the present case notwithstanding the kabulayat the jurisdiction to modify or cancel the grant must be regarded as conferred upon the Revenue Tribunal in view of the judgment of the Full Bench in Chhaganlal's case.

The appeal therefore fails and is dismissed with costs. No orders on the Civil application No. 135 of 1955.

By order of the Court,

:—V. I. M.

(Signed) V. R. GADKARI,
Deputy Registrar.

True copy
For Deputy Registrar
The 29th day of July 195

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

827.

Typed by Mr.S.D.Paradkar.

Examined by Mr.D.R.Gokarn.

Read by Mr.G.S.Desai.

73

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Superintendent, Decree Department.
20-4-1955.

30/8

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Monday the 7th day of February 1955.

Appeal No.1508 of 1952 From Appellate Decree.

(District:Dharwar.)

1.Vimpaksha Hanamant Joshi;

(Original Plaintiff.) ----- Appellant.

versus

1. The State of Bombay.

(Original Defendant.) ----- Respondent.

Claim-Rs.5 for both purposes.

The Plaintiff sued to obtain a declaration that the order of theRevenue Tribunal dated 8th August 1949 was ultra vires and null and void and not binding on him and for a permanent injunction restraining the State of Bombay from giving effect to the said order and in the alternative for awarding Rs.5000 as compensation and damages and for costs of the suit.

The Original Suit No.199 of 1949 was decided by the Civil Judge (SeniorDivison) of Hubli who dismissed it with costs.

The Appeal No.200 of 1951 of the District File was decided by the Extra Assistant Judge of Dharwar who confirmed the order of the Court of first instance and dismissed the Appeal with costs.

The grounds of objection to the decision appealed against are:-

1.That the findings of the lower Court on the first issue is wrong.

2. That the lower Court ought to have held that the order of

* An appeal has been admitted in the High Court from the decision of the lower Court. Notice was ordered to issue by the Honourable Mr. Justice Shah on the 4th day of December 1952.

the Revenue Tribunal was ultra vires and was a nullity.

3.That the lower Court ought to have seen that the case in which the order of the Revenue Tribunal was passed was not a revenue case.

4.That the appeal by Jayarachar was incompetent and the Tribunal had no jurisdiction to entertain it.

5.That there was already a concluded agreement between the Government and the Appellant in accordance with the order of the Commissioner and the same could not be superceded by the order of the Tribunal.

6.That the lower Court ought to have seen that Government itself had contended in this very case before theTribunal that it was not a revenue case.

7.That the lower Court erred in holding that the Tribunal had jurisdiction to entertain the present case.

8.That the lower Court ought to have held that there was finality to the terms of the agreement (kabulayat).

9.That the lower Court has not applied the correct rule of law to the facts of the present case.

10.That the Tribunal ought not to have entertained the application before it when the same had been presented to it after considerable delay.

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N.B.:-The alternative relief for damages is given up and the claim in appeal is limited to declaration and injunction and therefore the fixed Court fee of Rs.6-4-0 is paid in appeal.

Coram:-Shah,J.

For the reasons stated in the accompanying judgment,the Court confirms the decree passed by the lower appellate Court and dismisses the appeal with costs.

7-2-1955.

Sd/-V.R.Gadkari.

Deputy Registrar.

75

Bill of costs in the High Court.

By the Appellant	Rs.As.Ps.
Stamps for Memorandum of Appeal	6- 4- 0
Stamps for copies of Decree and Judgment	3-12- 0
Stamps for Vakalatnama	2- 8- 0
Bhatta for Process	0-10-0
Sectioner's Fee	20- 3- 0
Advocate's Fee	45- 0- 0
Sur charge	11- 4- 0
Printing charges	15- 0- 0
Total Rs:	104-9-0

By the Respondent	Rs.As.Ps.
Stamps for Vakalatnama (G.P.appears.)	0- 0- 0
Advocate's Fee	45- 0- 0
Sur charge	11- 4- 0
Total Rs:	56- 4-0

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(Seal)

Sd/-V.R.Gadkari.
Deputy Registrar.
The 7th day of February 1955.

True copy
for Deputy Registrar
The 20th day of April 1955.

Suits:
Dharwar.
For a declaration that the order of the Bombay Revenue Tribunal dated the 8th August 1947 setting aside the order of the Commissioner, Southern Division, dated the 23rd December 1943 and restoring that by the Collector's order dated the 18th December 1943 in respect of the suit land is illegal and ultra vires and for permanent injunction.

Government of Bombay
Legal Department,
Resolution No. 20021/5
Sachivalaya, Bombay, 10th September 1955.

Read Government Resolution, Legal Department No.16311/E dated the 26th July 1955.

In the Court of the Civil Judge (Senior Division) Hubli. Civil Suit No.199 of 1949. Virupax Hanamant Joshi ... Plaintiff; versus The State of Bombay ... Defendant.	Letter from the Government Pleader, High

Court, Bombay No.7758 dated the 30th August 1955, stating that the Second Appeal No.1508 of 1952 in the suit noted in the margin was decided by the High Court, of Judicature, at Bombay on the 7th February 1955, when the following order was passed:

> "For the reasons stated in the accompanying judgment, the Court confirms the decree passed by the lower appellate Court and dismisses the appeal with costs."

Letter from the Government Pleader, High Court, Bombay No.7758, dated the 30th August 1955, forwarding certified copies of the judgment and decree.

<u>Resolution</u>: The result of the second appeal is recorded.

By order and in the name of the Governor of Bombay,

original

D.P.Shikhare, 9/9
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Dharwar,
The Secretary, Bombay Revenue Tribunal, Bombay
The Government Pleader, High Court, Bombay,
The District Government Pleader, Dharwar.

Submitted for signature.
PPN 9/9
JS 9/9
DS (Civil)

BD/8.9

[illegible]

ib. mitter ... ...

25 Fcte in S Dharwar 7/50

TB
12/9 ... ...
Supdt IRC
13/9

S. Dharwar 7/50
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